

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 120797-001

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 4TH day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On April 22, 2011, XXXXX, authorized representative his son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on April 29, 2011.

The Petitioner is enrolled for health care benefits through the Michigan Education Special Services Association (MESSA). The coverage is underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The contract here is the *MESSA Choices* group health care benefit certificate (the certificate).

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

Between February 21 and August 1, 2010, the Petitioner received neurofeedback therapy from XXXXX. The therapy was provided via the internet and the charge for the services was \$2,250.00.

BCBSM denied coverage for this care ruling that psychotherapy services not provided face-to-face are not a covered benefit. The Petitioner appealed the denial through BCBSM's internal grievance process. BCBSM held a managerial-level conference and issued a final adverse determination upholding the denial on March 1, 2011.

III. ISSUE

Did BCBSM correctly deny coverage for the Petitioner's psychotherapy services provided by XXXXX?

IV. ANALYSIS

Petitioner's Argument

The Petitioner's parents indicate that they learned of XXXXX in late 2009 or early 2010. They explored XXXXX's services as an option for treating their son and his primary care physician provided a referral.

Before starting any treatment and to ensure that XXXXX's services would be covered, the Petitioner's mother met with XXXXX staff to discuss treatment options and costs. Because of time and travel concerns, the "home based" program was the most feasible for the Petitioner. They were told the program could be administered and supported over the internet, thereby saving approximately six trips per week to XXXXX for a six to eight month period.

The staff of XXXXX contacted MESSA to determine the extent of insurance coverage. The Petitioner's parents state they listened to a phone conversation with a MESSA representative in which coverage was confirmed. Based on this assurance of coverage, the Petitioner began participating in the program. After completing approximately 75% of the program, MESSA advised the Petitioner that it was no longer covering the services.

The Petitioner's family understands MESSA's position that the services are not covered because the counseling was not provided in a "face-to-face" setting. Had they been aware of MESSA's position at the beginning, they may have elected a different treatment option.

BCBSM's Argument

In its final adverse determination of March 1, 2011, BCBSM explained its reason for denying coverage for the psychotherapy:

. . . The services provided to [the Petitioner] are not a benefit under your MESSA contract. As a result, no payment can be made.

To clarify, [Petitioner's] services were reported under procedure code 90812. The services that can be reported under code 90812 are:

Individual psychotherapy, interactive, using play equipment, physical devices, language interpreter, or other mechanisms of non-verbal communication, in an office or outpatient facility, approximately 45 to 50 minutes face-to-face with the patient.

Based on the medical documentation provided to us by XXXXX, [Petitioner's] services did **not** include 45 to 50 minutes face-to-face between him and an eligible provider, nor were they the individual psychotherapy described above. Rather, the services performed were neurofeedback therapy using a computer program. Neurofeedback is not a benefit of your MESSA coverage because it is considered to be investigational. In addition, BCBSM does not reimburse any mental health services that do not include face-to-face encounter between the patient and a therapist.

BCBSM also disagrees with the Petitioner's parents' assertion that they received incorrect information from MESSA. BCBSM states their records show that on February 18, 2010, the Petitioner's father contacted MESSA and asked if CPT code 90812 was covered and he was told that it was. However, BCBSM indicates the Petitioner did not receive the type of therapy that is billed under that code number.

BCBSM maintains that its denial of coverage was appropriate.

Commissioner's Review

The certificate (page 5.13) describes the benefit for mental health services:

Mental Health and Substance Abuse Services

We pay for mental health and substance abuse services that are medically necessary and provided by an eligible provider.

Eligible Providers

- Medical doctors (M.D.)
- Doctors of osteopathy (D.O.)
- Fully licensed psychologists (Ph.D., D. Psy., F.L.P.)
- Certified nurse practitioners (C.N.P.)
- Hospital-based mental health facilities
- Outpatient psychiatric care facilities
- Hospital-based and freestanding residential substance abuse facilities
- Outpatient substance abuse treatment programs

The certificate provides coverage for interactive psychotherapy when medically necessary and performed by an eligible mental health provider. The claims in this case were for neurofeedback therapy provided by way of a computer. The services were not provided by an eligible provider as required by the certificate. Nothing in the record establishes that the therapy was face-to-face with an eligible provider. The Commissioner concludes that the therapy does not meet the criteria of the certificate and therefore was not a covered benefit.

The Petitioner believes MESSA misinformed his family about coverage and he states he relied on that information to proceed with the therapy; BCBSM disputes that contention. Under the Patient's Right to Independent Review Act (PRIRA), the Commissioner's role is limited to determining whether a health plan has properly administered health care benefits under the terms of the applicable insurance contract and state law. Because the PRIRA review process does not involve a hearing where witness testimony is offered, there is no opportunity for the Commissioner to resolve conflicting accounts of events, such as telephone conversations.

The Commissioner finds that BCBSM correctly applied the provisions of Petitioner's insurance certificate.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of March 1, 2011, is upheld. BCBSM is not required to provide coverage for the Petitioner's psychotherapy services.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, P.O. Box 30220, Lansing, MI 48909-7720.